

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)  
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

FILED

DEC 12 2018

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

Clerk, U.S. District Court  
Texas Eastern

PETITION FOR A WRIT OF HABEAS CORPUS BY  
A PERSON IN STATE CUSTODY

Rocky Allen Wilson

PETITIONER

(Full name of Petitioner)

TDCJ- BOYD UNIT

CURRENT PLACE OF CONFINEMENT

vs.

00816373

PRISONER ID NUMBER

BRIAN COLLIER

RESPONDENT

(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

**4:18cv862-ALM-CAN**

CASE NUMBER

(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

### PETITION

**What are you challenging?** (Check all that apply)

A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)  
 probation or deferred-adjudication probation.

A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)

A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)

Other: STREET - TIME CREDITS (Answer Questions 1-4, 10-11 & 20-25)

**All petitioners must answer questions 1-4:**

**Note:** In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: \_\_\_\_\_

199th JUDICIAL DISTRICT COURT -

COLLIN COUNTY, TEXAS

2. Date of judgment of conviction: JANUARY 28, 1998
3. Length of sentence: 20 year - TDCJ
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: 199 - 80512 - 97

sexual assault / Child

**Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:**

5. What was your plea? (Check one)  Not Guilty  Guilty  Nolo Contendere

6. Kind of trial: (Check one)  Jury  Judge Only

7. Did you testify at trial?  Yes  No

8. Did you appeal the judgment of conviction?  Yes  No

9. If you did appeal, in what appellate court did you file your direct appeal? \_\_\_\_\_

\_\_\_\_\_  
Cause Number (if known): \_\_\_\_\_

What was the result of your direct appeal (affirmed, modified or reversed)? \_\_\_\_\_

What was the date of that decision? \_\_\_\_\_

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_ Cause Number (if known): \_\_\_\_\_

If you filed a petition for a *writ of certiorari* with the United States Supreme Court, answer the following:

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed.  Yes  No

11. If your answer to 10 is "Yes," give the following information:

Name of court: 199th Judicial District Court - Collin County

Nature of proceeding: Writ of Habeas Corpus 11-07

Cause number (if known): W199-80512-97-HC7

Date (month, day and year) you filed the petition, application or motion as shown by a file stamped date from the particular court: September 14, 2018

Grounds raised: See: following page - 4A

Date of final decision: November 7, 2018

What was the decision? Denied

Name of court that issued the final decision: Court of Criminal Appeals, Texas

As to any second petition, application or motion, give the same information:

Name of court: \_\_\_\_\_

Nature of proceeding: \_\_\_\_\_

Cause number (if known): \_\_\_\_\_

Date (month, day and year) you filed the petition, application or motion as shown by a file stamped date from the particular court: \_\_\_\_\_

Grounds raised: \_\_\_\_\_

Date of final decision: \_\_\_\_\_

What was the decision? \_\_\_\_\_

Name of court that issued the final decision: \_\_\_\_\_

*If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition?  Yes  No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: \_\_\_\_\_

(b) Give the date and length of the sentence to be served in the future: \_\_\_\_\_

Grounds Raised: (#1) Has applicant's sentence as imposed by the Court  
been altered / extended ?

#2 Did Texas Board of Paroles withdraw applicant's street - time credit  
(650 days) while on parole ?

#3 Was applicant in custody while on parole ?

(c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future?  Yes  No

**Parole Revocation:**

13. Date and location of your parole revocation: Nov. 14, 2014 - Hopkins County, Texas

14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation?  Yes  No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?  Yes  No

16. Are you eligible for release on mandatory supervision?  Yes  No

17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

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Disciplinary case number: \_\_\_\_\_

What was the nature of the disciplinary charge against you? \_\_\_\_\_

18. Date you were found guilty of the disciplinary violation: \_\_\_\_\_

Did you lose previously earned good-time days?  Yes  No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

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Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

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19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?  Yes  No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

Step 2 Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

**All petitioners must answer the remaining questions:**

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

A. GROUND ONE: Was Appellants sentence as imposed by convicting court altered/extended? YES!

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appellants sentence was extended 650 days when parole board withdrew street-time credits earned while on parole. Board cited GC. 508.149(a)(6)(West 2017) & GC 508.283(c)(West 2012) that were not enacted until after offense date (12.6.96) or conviction date (1.28.98)

Please See: Memorandum.

B. GROUND TWO: Did Parole Board withdraw 650 days of street-time credits while on parole, extending sentence? Yes!

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Per TDCJ Time Credit Resolution Sheet, 650 days street-time credits were withdrawn, extending sentence.

SEE: Memorandum

SEE: Exhibit # 2, Time Credit Resolution Sheet.

C. GROUND THREE: Was Applicant in "Custody" while on parole? Yes!

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Per Gov. Code 508.143 and Parole Certificate, a parolee while at his liberty is in the legal custody of the Division.

See: Memorandum

See: Exhibit #3, Parole Certificate

D. GROUND FOUR: Does Applicant deserve relief, and credit of 650 days that was withdrawn by Parole Board? YES!

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

GC 508.149(a)(6)(West 2017) and GC 508.283(c)(West 2017) should not apply, as they were enacted after the date of offense (12-6-96) and date of conviction (1-28-98). Was not enacted as retroactive.

SEE: Exhibit 4, Section 5, States Response To Writ of Habeas Corpus.

21. Relief sought in this petition: Reinstate the 650 days that was withdrawn, allowing Applicant to pursue other relief he may be entitled, for being held past his original date of discharge, April 7, 2017. Applicant request that all 650 days be credited back to his sentence.

22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition?  Yes  No  
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

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If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)?  Yes  No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?  
 Yes  No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

Ground #4, asking Federal Court to decide if I should be granted relief to pursue other relief I may be intitled for over incarceration.

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

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25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Lawrence P. Davis 115 Henderson St Ft Worth 76102

(b) At arraignment and plea: SAME AS ABOVE

(c) At trial: SAME AS ABOVE

(d) At sentencing: SAME AS ABOVE

(e) On appeal: SAME AS ABOVE

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

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**Timeliness of Petition:**

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.<sup>1</sup>

*This matter has been going on between myself, Parole Board and Court for awhile. The final decision was made on November 7, 2018. I have struggled with this, not knowing rules. Please provide me some leeway, as I'm only trying to correct what I believe to be an injustice.*

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<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of:
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

USA  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the ~~prison~~ mailing system on

12 - 10 - 2018 (month, day, year).

Executed (signed) on 12 - 10 - 2018 (date).

Rocky Allen Wilson  
Signature of Petitioner (required)

Petitioner's current address: Boyd Unit

200 Spur 113 Teague, Texas 75860